

102 Stat. 1553; Pub. L. 103-355, title IV, § 4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110-28, title VIII, § 8306, May 25, 2007, 121 Stat. 211.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(B), probably should be “this title”, meaning title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, known as the Buy American Act, which is classified generally to sections 10a, 10b, and 10c of this title. For complete classification of title III to the Code, see Short Title note below and Tables.

#### AMENDMENTS

2007—Pub. L. 110-28 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1994—Pub. L. 103-355 inserted at end “This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 428 of this title.”

1988—Pub. L. 100-418, §§ 7004, 7005(b), temporarily substituted “Federal agency” for “department or independent establishment”. See Effective and Termination Dates of 1988 Amendment note below.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 4301(c) of Pub. L. 103-355 provided that: “Notwithstanding any other provision of law—

“(1) section 32 of the Office of Federal Procurement Policy Act [41 U.S.C. 428], as added by subsection (a); and

“(2) the amendment made by subsection (b) [amending this section]; shall take effect on the date of the enactment of this Act [Oct. 13, 1994] and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.”

#### EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Section 7004 of title VII of Pub. L. 100-418 provided that: “The amendments made by this title [see Short Title of 1988 Amendment note below] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 [former 19 U.S.C. 2515(k)], and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Section 7005(f) of title VII of Pub. L. 100-418 provided that: “The amendments made by this section [amending sections 10a, 10b, 10c, and 10d of this title and section 2511 of Title 19, Customs Duties] shall take effect upon enactment [Aug. 23, 1988].”

#### SHORT TITLE OF 1988 AMENDMENT

Section 7001 of title VII of Pub. L. 100-418 provided that: “This title [enacting section 10b-1 of this title, amending this section, sections 10b, 10c, and 10d of this title, and sections 2511 and 2515 of Title 19, Customs Duties, enacting provisions set out as notes under section 10a of this title, and amending provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act of 1988’.”

#### SHORT TITLE

Section 7, formerly section 5, of title III of act Mar. 3, 1933, as added by Pub. L. 103-355, title X, § 10005(f)(4), Oct. 13, 1994, 108 Stat. 3409, and renumbered and amended by Pub. L. 104-106, div. D, title XLIII, § 4321(a)(11), Feb. 10, 1996, 110 Stat. 671, provided that: “This title [enacting this section, sections 10b and 10c of this title, and provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act’.”

#### IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100-371, title V, § 508, July 19, 1988, 102 Stat. 875, provided that:

“(a) GENERAL RULE.—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a–10c) [41 U.S.C. 10a, 10b, 10b-1, 10c], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

“(b) APPLICABILITY.—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].”

#### EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

#### APPLICABILITY OF BUY AMERICAN ACT WITH RESPECT TO EUROPEAN COMMUNITY

For applicability of Buy American Act to procurements covered by agreement with the European Community on government procurement, see Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, set out as a note under section 2511 of Title 19, Customs Duties.

### § 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however,* That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such findings is made public.

(Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520; Pub. L. 100-418, title VII, § 7005(c), Aug. 23, 1988, 102 Stat. 1553.)

## AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418, §§7004, 7005(c)(1), which directed that this section be temporarily amended by substituting “Federal agency” for “department or independent establishment”, was executed to subsec. (a) as the probable intent of Congress. See Termination Date of 1988 Amendment note below.

Subsec. (b). Pub. L. 100–418, §§7004, 7005(c)(2), temporarily substituted “Federal agency” for “department, bureau, agency, or independent establishment”. See Termination Date of 1988 Amendment note below.

## TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100–418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

## PROHIBITION ON USE OF FUNDS FOR CONSTRUCTION CONTRACTS WITH CONTRACTORS OF FOREIGN COUNTRIES WHICH DENY UNITED STATES CONTRACTORS FAIR OPPORTUNITIES IN CONSTRUCTION PROJECTS OF THAT COUNTRY’S GOVERNMENT

Provisions prohibiting the obligation or expenditure of funds to enter into any contract for construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country denies fair and equitable market opportunities for products and services of the United States in procurement or bidding for construction projects that cost more than \$500,000 and are funded in whole or in part by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country were contained in the following appropriation acts:

Pub. L. 101–516, title III, §340, Nov. 5, 1990, 104 Stat. 2187.

Pub. L. 101–514, title V, §511, Nov. 5, 1990, 104 Stat. 2098.

Pub. L. 100–202, §109, Dec. 22, 1987, 101 Stat. 1329–434; Pub. L. 105–362, title XIV, §1401(d), Nov. 10, 1998, 112 Stat. 3294.

## § 10b–1. Omitted

## CODIFICATION

Section, act Mar. 3, 1933, ch. 212, title III, §4, as added Aug. 23, 1988, Pub. L. 100–418, title VII, §7002(2), 102 Stat. 1545; amended Oct. 13, 1994, Pub. L. 103–355, title VII, §7206(a), 108 Stat. 3382, which related to prohibition on procurement contracts, was omitted in view of section 7004 of Pub. L. 100–418 which provided that the amendment by Pub. L. 100–418 enacting this section ceased to be effective on Apr. 30, 1996. See section 7004 of Pub. L. 100–418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

Another prior section 4 of act Mar. 3, 1933, was temporarily renumbered section 5 and is set out as a note under section 10c of this title.

## § 10b–2. Limitation on authority to waive Buy American Act requirement

## (a) Buy American Act waiver rescissions

(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall

rescind the Secretary’s blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

## (b) Definition

For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

(Pub. L. 103–160, div. A, title VIII, §849(c), (d), Nov. 30, 1993, 107 Stat. 1725.)

## REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

## CODIFICATION

Subsecs. (a) and (b) were in the original subsecs. (c) and (d), respectively, and were editorially redesignated for purposes of codification.

Pub. L. 103–160, §849(c), (d), which comprises this section, was formerly set out as a note under this section.

## SIMILAR PROVISIONS

Provisions similar to those in this section and section 10b–3 of this title were contained in the following acts:

Pub. L. 110–329, div. C, title VIII, §8030, Sept. 30, 2008, 122 Stat. 3627.

Pub. L. 110–116, div. A, title VIII, §8029, Nov. 13, 2007, 121 Stat. 1321.

Pub. L. 109–289, div. A, title VIII, §8027, Sept. 29, 2006, 120 Stat. 1279.

Pub. L. 109–148, div. A, title VIII, §8030, Dec. 30, 2005, 119 Stat. 2705.

Pub. L. 108–287, title VIII, §8032, Aug. 5, 2004, 118 Stat. 977.

Pub. L. 108–87, title VIII, §8033, Sept. 30, 2003, 117 Stat. 1079.

Pub. L. 107–248, title VIII, §8033, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, §8036, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106–259, title VIII, §8036, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106–79, title VIII, §8038, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105–262, title VIII, §8038, Oct. 17, 1998, 112 Stat. 2305.

Pub. L. 105–56, title VIII, §8040, Oct. 8, 1997, 111 Stat. 1229.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8042], Sept. 30, 1996, 110 Stat. 3009–71, 3009–97.

Pub. L. 104–61, title VIII, §8051, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, §8058, Sept. 30, 1994, 108 Stat. 2631.

Pub. L. 103–139, title VIII, §8069, Nov. 11, 1993, 107 Stat. 1455.

Pub. L. 102–396, title IX, §9096, Oct. 6, 1992, 106 Stat. 1924, as amended by Pub. L. 103–355, title VII, §7206(b), Oct. 13, 1994, 108 Stat. 3382.